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APPELLANT PRO SE:

STEVEN D. HOLMES
Bonita Springs, Florida

**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE PATERNITY OF L.L.W.,)	
)	
STEVEN D. HOLMES,)	
)	
Appellant,)	
)	
vs.)	No. 49A02-0604-JV-305
)	
MELODEE A. WEST,)	
)	
Appellee.)	

APPEAL FROM THE MARION CIRCUIT COURT
The Honorable Theodore M. Sosin, Judge
Cause No. 49C01-0112-JP-2526

August 17, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Steven D. Holmes (“Father”) brings this pro se appeal of an order entered by the Marion Circuit Court on his and Melodee West’s (“Mother”) petitions for modification and rule to show cause. He raises the following issues, which we combine and restate as:

- I. Whether the trial court improperly deviated from the Indiana Parenting Time Guidelines;
- II. Whether the trial court improperly found Father in contempt for failure to pay court-ordered support; and,
- III. Whether the trial court improperly ordered Father to pay a portion of Mother’s attorney’s fees.

We affirm.

Facts and Procedural History

On December 3, 2001, Father filed a petition to establish paternity, custody, support and a name change of L.L.W. The trial court established Father’s paternity, awarded temporary custody to Mother, and ordered Father to pay \$74 per week in child support. After a final hearing conducted in June 2003, the trial court awarded custody of L.L.W. to Mother and ordered Father to pay \$208 per week in support, as well as an additional \$22 per week to pay off an arrearage of \$2780. The trial court ordered that Father’s first seven visits with L.L.W. be in Atlanta with his sister, who had an established relationship with L.L.W., after which his parenting time could be exercised at his home in Florida.

On November 9, 2004, Mother filed a motion for rule to show cause and a petition for modification of paternity decree. Father filed his answer along with a counter-petition for rule to show cause on December 7, 2004; an amended answer on December 21, 2004;

and another counter-petition for modification of paternity decree and rule to show cause on March 8, 2005.

The trial court conducted a hearing on Mother's petition and Father's counter-petitions on January 24, 2006. On March 13, 2006, the court issued an order finding Father in contempt for failing to pay child support in accordance with its 2003 order. The court refused to modify its parenting time order and ordered Father to pay \$3500 of Mother's attorney's fees. Father now appeals.

Standard of Review

Mother has filed no appellee's brief. In such a case, we do not undertake the burden of developing arguments for the appellee, but instead, applying a less stringent standard of review, may reverse the trial court if the appellant establishes prima facie error. Thurman v. Thurman, 777 N.E.2d 41, 42 (Ind. Ct. App. 2002). In this sense, prima facie means at first sight, on first appearance, or on the face of it. Id.

Discussion and Decision

I. Parenting Time

Father argues that the trial court erred by deviating from the Indiana Parenting Time Guidelines without providing a written explanation for doing so. Specifically, he asserts that the only explanation offered by the trial court for the deviation is Father's need to complete all seven "phase-in" visits with L.L.W. ordered in September 2003 before he may have parenting time at his home in Florida.

First, we note that the "written explanation need not be as formal as Findings of Fact and Conclusions of Law; however, it must state the reason(s) for the deviation."

Commentary, Indiana Parenting Time Guidelines, Scope of Application, 2 (2007). In its March 2006 order, the trial court noted:

The Court spent a great deal of time [and] thought in constructing the parenting time plan in its 9/03 order. The point of this plan was to “phase-in” the visits over time, gradually arriving at visits per the Ind[iana] Parenting Time Guidelines, [and] gradually arriving at visits in Florida. Per this order, [Father] had 8 opportunities for visits. [Father] only exercised 1 visit, and this was in 11/05. [Father] had only requested 2 other visits between 9/03 and now, and these requests were not in conformance with the order.

Addendum to Br. of Appellant p. 4. We find this explanation of the court’s reasoning adequate to explain its deviation from the Parenting Time Guidelines. To the extent that Father also seems to challenge the trial court’s 2003 parenting time order, he has failed to include that order in the record on appeal. We cannot conclude that Father has demonstrated prima facie error in the order of parenting time.

II. Contempt

Next, Father argues that the trial court improperly found him in contempt for failure to pay child support. The trial court has authority to use its contempt power only when the parent has the ability to pay the support due and his failure to do so was willful. Pettit v. Pettit, 626 N.E.2d 444, 448 (Ind. 1993). We will reverse the trial court’s finding of contempt where an abuse of discretion has been shown, which occurs only when the trial court’s decision is against the logic and effect of the facts and circumstances before it. Mitchell v. Mitchell, 785 N.E.2d 1194, 1198 (Ind. Ct. App. 2003). When we review a contempt order, we neither reweigh the evidence nor judge the credibility of the witnesses. Id.

Here, the trial court found as follows:

[Father's] support order was modified in September of 2003 per the court's last order. [Father] did not request that the court "phase-in" its order, did not ask the court to reconsider its order, nor did he appeal the order. Therefore, the court's order of support as issued at that time stands. Incidentally, the income figure used for [Father] in that calculation is far less than what [Father] was actually earning, at least from 9/04 forward. [] [Father] has not paid his support on a regular and consistent basis since August of 2003, despite having adequate income to do so for much of the time. [Father] also spent almost a year in California exploring other career options, during which time his payments were not regular, when he could have remained in Florida with an ability to generate more income and pay his support. [Father] is found in contempt for his willful failure to pay child support in accordance with the order.

Addendum to Br. of Appellant at 1-2.

Father argues that the 2003 order was improperly based upon an imputed income of \$40,000 without a specific finding that he was deliberately underemployed. However, as the trial court noted in its 2006 order, Father did not challenge the amount of support ordered in 2003 at the time. Nor has Father provided us with the 2003 order in the record on appeal. Based on the record before us, we cannot conclude that the trial court abused its discretion when it found Father in contempt for willful failure to pay support.

III. Attorney's Fees

Finally, Father also contends that the trial court improperly awarded attorney's fees because neither Mother's petition for modification nor motion for rule to show cause included a specific request for attorney's fees. Indiana Code section 31-14-18-2 provides that "[t]he court may order a party to pay: (1) a reasonable amount for the cost to the other party of maintaining an action under this article; and (2) a reasonable amount for attorney's fees..." Ind. Code § 31-14-18-2 (1998 & Supp. 2007). The statute does not mandate that a party must request attorney's fees in order for the trial court to award

them. Thus, it is irrelevant that Mother did not specifically request an award of attorney's fees in her petition. See Young v. Young, 654 N.E.2d 880, 885 (Ind. Ct. App. 1995), trans. denied. Father has not established prima facie error in the order that he pay a portion of Mother's attorney's fees.

Conclusion

Father has not established prima facie error in the trial court's order on child support and parenting time.

Affirmed.

DARDEN, J., and KIRSCH, J., concur.